

AMENDED IN ASSEMBLY APRIL 30, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1448

Introduced by Assembly Member Liu

February 21, 2003

An act to add Section 15657.5 to the Welfare and Institutions Code, relating to elder and dependent adult abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 1448, as amended, Liu. Elder and dependent adult abuse: civil actions: binding arbitration.

~~Existing law, the~~

The Elder Abuse and Dependent Adult Civil Protection Act, establishes various procedures for the reporting, investigation, and prosecution of elder and dependent adult abuse. Among other things, the act establishes procedures for civil actions for abuse of elderly or dependent adults. Under existing law, these provisions apply to, among others, elder and dependent adults in long-term care facilities, as defined in the act.

Existing law separately establishes requirements for long-term health care facility admission agreements, including contracts of admission that contain an arbitration clause.

This bill would, *notwithstanding existing law*, prohibit a long-term care facility, *as defined*, from ~~requiring that a civil action for abuse of an elder or dependent adult brought against the facility pursuant to the act be submitted to binding arbitration, but would not prohibit the parties from voluntarily submitting their dispute to binding arbitration requesting, prior to the existence of a dispute, a resident or applicant~~

to agree to arbitrate or otherwise waive any rights or procedures related to the act. The bill would specify that it shall not prohibit a long-term care facility and a resident or applicant from knowingly and voluntarily agreeing to binding arbitration after a dispute arises. This bill would prohibit a long-term care facility from taking specified retaliatory action against a resident or applicant because he or she refuses to waive rights and procedures available under the act, or because he or she refuses to sign or comply with an arbitration agreement that violates the bill.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) *The Legislature finds and declares that it is*
 2 *the public policy of the state to ensure that applicants to and*
 3 *residents of long-term care facilities have the full benefit of the*
 4 *rights and procedures contained in the Elder Abuse and*
 5 *Dependent Adult Civil Protection Act Chapter 11 (commencing*
 6 *with Section 15600) of Part 3 of Division 9 of the Welfare and*
 7 *Institutions Code, and that applicants and residents not be*
 8 *deprived of those rights or procedures by the use of coerced and*
 9 *involuntary waivers. Therefore, it is the intent of the Legislature in*
 10 *enacting this act to ensure that any agreement between a long-term*
 11 *care facility and an applicant or resident to waive any rights or*
 12 *procedures under the act, including any agreement to arbitrate any*
 13 *claim arising under the act, is a matter of knowing and voluntary*
 14 *consent and not coercion.*

15 (b) *The Legislature finds and declares that a waiver of rights or*
 16 *procedures under the act, including an agreement to arbitrate a*
 17 *dispute under the act, that is contained within a contract of*
 18 *admission or otherwise agreed to prior to a dispute, is involuntary,*
 19 *unconscionable, and against public policy.*

20 SEC. 2. Section 15657.5 is added to the Welfare and
 21 Institutions Code, to read:

22 15657.5. (a) (1) ~~A~~ *Notwithstanding Section 1599.81 of the*
 23 *Health and Safety Code, a long-term care facility may not require*
 24 *request, in its contract of admission, or otherwise, that a civil*
 25 *action for abuse of an elder or dependent adult brought against the*

1 ~~facility pursuant to this chapter shall be submitted to binding~~
2 ~~arbitration.~~

3 ~~(2) This subdivision shall not be construed to prohibit the~~
4 ~~parties to a civil action for abuse of an elder or dependent adult~~
5 ~~brought against a long-term care facility pursuant to this chapter~~
6 ~~from voluntarily submitting their dispute to binding arbitration.~~

7 ~~(b) prior to the existence of a dispute under this chapter, that~~
8 ~~a resident or applicant agree to arbitrate or otherwise waive any~~
9 ~~rights or procedures provided for in this chapter, including, but not~~
10 ~~limited to, the right to file a civil action against the facility.~~

11 ~~(2) This subdivision shall not be construed to prohibit a~~
12 ~~long-term care facility and a resident or applicant from knowingly~~
13 ~~and voluntarily agreeing to binding arbitration after a dispute~~
14 ~~arises under this chapter.~~

15 ~~(b) A long-term care facility may not refuse to admit, harass,~~
16 ~~transfer, discharge, expel, or otherwise retaliate against a resident~~
17 ~~or applicant because he or she refuses to waive rights or~~
18 ~~procedures provided for in this chapter, or because he or she~~
19 ~~refuses to sign or comply with an arbitration agreement that~~
20 ~~violates this section.~~

21 ~~(c) For purposes of this section, “contract of admission”~~
22 ~~means all documents that a resident or his or her representative~~
23 ~~must sign at the time of, or as a condition of, admission to a~~
24 ~~long-term care facility.~~